

AMENDED IN SENATE JANUARY 20, 2004

AMENDED IN SENATE JANUARY 5, 2004

**SENATE BILL**

**No. 559**

**Introduced by Senator Ortiz**

February 20, 2003

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An act to add ~~Article 6.2 (commencing with Section 25367.1) to Chapter 6.8 of Chapter 6.86 (commencing with Section 25399.10)~~ to Division 20 of the Health and Safety Code, relating to hazardous ~~substances~~ *materials*.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as amended, Ortiz. Hazardous ~~substances~~ *materials*: Brownfield ~~response unit~~ *site cleanup and reuse*.

The Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control (*department*) to adopt, by regulation, criteria for the selection and priority ranking of hazardous substance release sites for removal or remedial action under the act. The act requires the department or, if appropriate, a California regional water quality control board, to prepare or approve remedial action plans for each listed site.

Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous substance release. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party and, upon determining that the site investigation and

remedial action has been satisfactorily completed, to issue a certificate of completion to the responsible party.

~~This bill would enact the Brownfield Response Unit Program Act and would require the Secretary for Environmental Protection to establish a brownfield response unit within the California Environmental Protection Agency. The act would require the unit to meet specified requirements and to report only to the secretary. The bill would prohibit the Department of Toxic Substances Control and the State Water Resources Control Board from requiring the unit's actions to be approved or reviewed by any other division of the department or board.~~

~~The bill would authorize the unit to oversee a response action at a brownfield site pursuant to the act only upon the application of a local public entity, as defined, and would require the unit to select a site for a response action under the act if the site meets the conditions of a brownfield, as defined. The bill would require the unit to follow specified procedures with regard to reviewing an application submitted by a local public entity for oversight of a response action under the act, including notifying all potentially responsible parties and potentially interested state and local regulatory agencies that the unit has accepted oversight of the response action pursuant to the act. The bill would authorize those agencies to participate in a specified conferences regarding the brownfield site. The bill would require the remedial site investigation workplan and the removal action workplan for the brownfield site to be submitted and approved in accordance with a specified schedule and procedure.~~

~~The bill would require the unit to issue a certificate of completion, as defined, to the local public entity, for a brownfield site when the response action to the site is satisfactorily completed in accordance with an approved removal action workplan, and the unit makes a specified finding; establish the Brownfield Site Cleanup and Reuse Program Act, define terms, and authorize the department to establish and implement a site assessment grant program and a program for funding the department's oversight costs for qualifying brownfield site projects, to the extent that funding is provided for these purposes by the Legislature, or from federal grant funds or other sources.~~

~~The bill would authorize the department to adopt guidance documents, policies, and procedures to implement the act and would exempt the adoption of these documents, policies, and procedures from the administrative requirements for the adoption of regulations. The bill would require the department to provide information to the State Water~~



*Resources Control Board and the California regional water quality control boards regarding brownfield site projects that are being considered for oversight by the department pursuant to the act. The bill would also require the department to pursue specified agreements with state and federal agencies and would require the department and the water board to enter into an agreement to minimize overlap, and to maximize coordination and consistency in oversight of brownfield site projects under the act.*

*The bill would authorize the department to enter into an environmental oversight agreement with any person for the department's consultation regarding, or the oversight of, a site assessment or response action, or both, at a brownfield site. The bill would define a person who enters into an environmental oversight agreement with the department as a brownfield project sponsor. The bill would specify eligibility requirements and specified conditions for entering into an agreement.*

*The bill would require a brownfield project sponsor who enters into an agreement for the oversight of a site assessment to submit a site assessment plan to the department. The bill would require the department to evaluate the adequacy of a site assessment plan and if the department finds that the site assessment plan is adequate, the department would be required to approve the plan and notify appropriate persons.*

*The bill would require a brownfield project sponsor who enters into an agreement for the oversight of a response action plan to submit a response action plan to the department and would require the department to evaluate the adequacy of the response action plan submitted in accordance with specified criteria. The department would be required to approve the plan if the department makes certain finding and would authorize the department, in approving a response action plan, to require, as a condition of approval, additional requirements, including requirements for long-term maintenance and operations, land use controls, and engineering controls.*

*The bill would allow a response action plan to include land use controls that impose appropriate conditions, restrictions, and obligations on land use or activities when hazardous materials will remain at the site at a level that is not suitable for unrestricted use of the land, as specified. The bill also would require the department to issue a certificate of completion upon the satisfactory completion of a*



response action by a brownfield project sponsor; in accordance with an approved response action plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. — Article 6.2 (commencing with Section 25367.1)~~

2 *SECTION 1. Chapter 6.86 (commencing with Section*  
3 *25399.10) is added to Division 20 of the Health and Safety Code,*  
4 *to read:*

5  
6 *CHAPTER 6.86. BROWNFIELD SITE CLEANUP AND REUSE PROGRAM*  
7 *ACT*  
8

9 *Article 1. Findings and Definitions*  
10

11 *25399.10. The Legislature hereby finds and declares all of the*  
12 *following:*

13 *(a) (1) There are thousands of brownfield sites in the state*  
14 *where redevelopment has been stymied due to real or perceived*  
15 *hazardous materials contamination. Cleaning up these sites and*  
16 *returning them to productive use will benefit the communities in*  
17 *which they are located and the state as a whole.*

18 *(2) Contamination of property in the state has hampered*  
19 *redevelopment, which, in turn has limited job creation, economic*  
20 *revitalization, and the full and productive use of the land.*

21 *(3) Because of the reluctance of private developers, local*  
22 *governments, and schools to redevelop these properties, the*  
23 *location of new development tends to be at the edges of urban*  
24 *areas, because those areas are generally perceived to entail lesser*  
25 *potential for contamination and liability for cleanup costs.*

26 *(4) This has resulted in a multitude of problems, including*  
27 *urban sprawl, decaying inner-city neighborhoods and schools,*  
28 *public health and environmental risks stemming from*  
29 *contaminated properties, reduced inner-city tax bases, and an*  
30 *increased need for major infrastructure improvements, such as*  
31 *streets, highways, and sewer systems to service the urban fringe*  
32 *areas while the inner-city infrastructure deteriorates.*

1 (5) One of the primary reasons these properties are not  
2 redeveloped for beneficial use is that potential redevelopers are  
3 hesitant to expend funds to determine whether a property is  
4 contaminated, and if so, how much it would cost to remediate the  
5 site.

6 (6) Cleanup of contaminated land can and should be  
7 coordinated with plans for redevelopment and sustainable reuse of  
8 land whenever possible, including coordination of the public  
9 participation activities of the state with those of local agencies.

10 (b) It is therefore the intent of the Legislature in enacting this  
11 article to do all of the following:

12 (1) Clearly establish that the cleanup and reuse of brownfield  
13 sites is a priority of the state, and specifically, of the California  
14 Environmental Protection Agency.

15 (2) Minimize procedural burdens and establish an efficient,  
16 flexible, consistent, and expeditious process while ensuring that  
17 cleanups are fully protective of public health, safety and the  
18 environment.

19 (c) This chapter shall be known, and may be cited as, the  
20 “Brownfield Site Cleanup and Reuse Program Act.”

21 25399.11. The definitions in this section govern the  
22 interpretation of this chapter. Unless the context requires  
23 otherwise, and except as provided in this section, the definitions  
24 contained in Article 2 (commencing with Section 25310) of  
25 Chapter 6.8 apply to the terms used in this chapter.

26 (a) “Agency” means the California Environmental Protection  
27 Agency.

28 (b) “Agreement” means an environmental oversight  
29 agreement entered into pursuant to Section 25399.14.

30 (c) “Board” means the State Water Resources Control Board.

31 (d) “Brownfield project sponsor” means a person who enters  
32 into an environmental oversight agreement with the department  
33 pursuant to this chapter.

34 (e) (1) “Brownfield site” or “site” means real property, the  
35 expansion, redevelopment, or reuse of which may be complicated  
36 by the presence or perceived presence of hazardous materials.

37 (2) “Brownfield site” does not include any of the following:

38 (A) A facility that is listed or proposed for listing on the  
39 National Priorities List established under Section 105 of the

1 *Comprehensive Environmental Response, Compensation and*  
2 *Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).*

3 (B) *A site that is subject to an existing cleanup or abatement*  
4 *order issued by a regional board pursuant to Section 13304 of the*  
5 *Water Code or an enforcement action by the department pursuant*  
6 *to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8*  
7 *(commencing with Section 25300).*

8 (C) *A property that is or was owned or operated by a*  
9 *department, agency, or instrumentality of the United States.*

10 (D) *A site on the list maintained by the department pursuant to*  
11 *Section 25356.*

12 (f) *“Department” means the Department of Toxic Substances*  
13 *Control.*

14 (g) *“Hazardous material” has the same meaning as defined in*  
15 *subdivision (d) of Section 25260.*

16 (h) *“Land use control” means a recorded instrument executed*  
17 *pursuant to Section 25399.19 that restricts or imposes obligations*  
18 *on the present and future uses or activities on a brownfield site,*  
19 *including, but not limited to, recorded easements, covenants,*  
20 *restrictions or servitudes, or any combination thereof, as*  
21 *appropriate.*

22 (i) *“Local public entity” means a city, county, or*  
23 *redevelopment agency as defined in Section 33003.*

24 (j) *“Presumptive cleanup approach” means a standard remedy*  
25 *for a brownfield site that that has similar chemical contaminants*  
26 *or similar characteristics with other sites, based on historical*  
27 *patterns of remedy selection and scientific and engineering*  
28 *evaluation of cleanup technology performance.*

29 (k) *“Regional board” means a California regional water*  
30 *quality control board.*

31 (l) *“Response,” “respond,” or “response action” have the*  
32 *same meaning as defined in Section 25323.3 except that*  
33 *“response,” “respond,” and “response action” under this chapter*  
34 *apply to hazardous material as defined in subdivision (g).*

35 (m) *“Response action plan” or “plan” means a response*  
36 *action plan submitted to the department pursuant to Section*  
37 *25399.16.*

38



Article 2. Grants, Funding, and Administration

25399.12. (a) To the extent that funding is provided for these purposes by the Legislature, or from federal grant funds or other sources, the department may establish and implement one or both of the following:

(1) A site assessment grant program.

(2) A program for funding the department's oversight costs for qualifying brownfield site cleanup projects, as determined by the department and by the terms of the funding provided for this purpose.

(b) The department may adopt guidance documents, policies, and procedures to implement the brownfield site cleanup and reuse program established by this chapter, including facilitating the use of rational presumptive approaches and other methods for site investigation and cleanup. The adoption of guidance documents, policies, and procedures is not the adoption of regulations for purposes of, and is not subject to, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) Except as otherwise expressly provided in this chapter, this chapter does not affect the authority of the department to issue any order or take any other action under any other provision of law to protect public health and safety or the environment.

(2) Except as otherwise expressly provided in this chapter, this chapter does not affect the authority of the department, a regional board, or any other public agency to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

(3) Except as otherwise expressly provided in this chapter, Chapter 6.8 (commencing with Section 25300) does not apply to the implementation of this chapter.

25399.13. (a) Pursuant to procedures developed by the department and the board, the department shall provide information to the board and the regional boards at least once every three months regarding brownfield site projects that are being considered for oversight by the department pursuant to this chapter.

1 (b) The department shall maintain information on brownfield  
2 sites that are subject to oversight under this chapter and shall make  
3 this information available through its Internet Web page.

4 (c) The department shall pursue agreements with appropriate  
5 state and federal agencies to provide assurances that the interests  
6 and concerns of those agencies are met when a certificate of  
7 completion is issued under this chapter. The state and federal  
8 agencies that the department may enter into an agreement with,  
9 include, but are not limited to, the board, the regional boards, and  
10 Region IX of the federal Environmental Protection Agency.

11 (d) The department and the board shall enter into an agreement  
12 to minimize overlap, and to maximize coordination and  
13 consistency, in the oversight of brownfield site cleanup and reuse  
14 projects that are subject to this chapter. The agreement shall do  
15 both of the following:

16 (1) Maximize the efficient and effective use of the state  
17 resources that are available to facilitate brownfield site cleanup  
18 and reuse.

19 (2) Describe a framework to ensure that the appropriate state  
20 agency provides environmental oversight at a brownfield site.

21 (e) The Secretary for Environmental Protection shall assist in  
22 coordinating the oversight conducted by the department and the  
23 board, if the brownfield project sponsor is a local public entity.

24  
25 Article 3. Environmental Oversight Agreements: Site  
26 Assessment and Response Action Plans  
27

28 25399.14. (a) (1) A person may voluntarily seek the  
29 oversight of the department for consultation services and for  
30 review and approval of a site assessment plan or a response action  
31 plan, or both, for an eligible brownfield site that may be  
32 contaminated by the release of hazardous materials, by entering  
33 into an agreement pursuant to this section.

34 (2) Except as provided in subdivision (i), the department may  
35 enter into an environmental oversight agreement with any person  
36 for the department's consultation regarding, or oversight of, a site  
37 assessment or a response action, or both, at a brownfield site  
38 pursuant to Sections 25399.15 and 25399.16. This consultation  
39 may include, but is not limited to, participating in meetings or site



1 visits, review of documents or other information, and providing  
2 technical advice.

3 (b) (1) A person who elects to become a brownfield project  
4 sponsor shall submit to the department sufficient information for  
5 the department to determine whether the site is a brownfield site  
6 and for the department to prepare an agreement pursuant to this  
7 section.

8 (2) The person who elects to become a brownfield project  
9 sponsor shall demonstrate to the department that the brownfield  
10 project sponsor owns or otherwise has sufficient control over the  
11 brownfield site to conduct a site assessment or response action  
12 pursuant to this chapter and to provide access to the brownfield  
13 site for the purposes of the department's oversight activities.

14 (c) Either the department or a brownfield project sponsor may  
15 withdraw from an agreement by providing adequate written notice  
16 to the other party prior to withdrawing. Before withdrawing from  
17 an agreement, the brownfield project sponsor shall do both of the  
18 following:

19 (1) Reimburse the department for its incurred costs.

20 (2) Demonstrate, to the satisfaction of the department, that  
21 conditions at each brownfield site to which the agreement applies  
22 do not endanger public health and safety or the environment.

23 (d) A brownfield project sponsor who enters into an agreement  
24 with the department is responsible for all costs the department  
25 incurs for consultation regarding, and oversight of, a site  
26 assessment or response action subject to the agreement.

27 (e) For the purposes of recovering the department's costs  
28 pursuant to this chapter, the department shall provide a brownfield  
29 project sponsor who enters into an agreement with an estimate that  
30 includes all of the following information:

31 (1) A description of the work to be performed or services to be  
32 provided.

33 (2) The estimated billing rates for all classes of employees  
34 expected to perform work under the agreement.

35 (3) An estimate of the charges to be billed under the agreement,  
36 to the extent the department can project its time and costs in  
37 advance. The department may adjust this estimate based on an  
38 analysis of new information that supports the adjustment,  
39 including, but not limited to, those circumstances as a change in  
40 the scope of the original work, additional work that is needed to

1 *ensure protection of human health or safety or of the environment,*  
2 *or other circumstances that arise that require substantially more*  
3 *time and effort than was originally anticipated to complete the*  
4 *work. Before adjusting the estimate, the department shall provide*  
5 *written notice to the brownfield project sponsor.*

6 *(f) An agreement is exempt from any requirement of the Public*  
7 *Contract Code that requires the oversight, review, or approval by*  
8 *the Department of General Services.*

9 *(g) The Attorney General may, upon the request of the*  
10 *department, commence an action to recover any response costs*  
11 *incurred by the department for work performed or services*  
12 *provided in connection with a brownfield site under this chapter,*  
13 *including consultation and oversight of site assessment or*  
14 *response actions, against the person responsible for the*  
15 *department's incurred costs.*

16 *(h) To facilitate informal discussion and information sharing,*  
17 *and, to the extent that funding to reimburse the department's costs*  
18 *is available for this purpose, the department may provide initial*  
19 *consultation services for one or more brownfield sites before*  
20 *entering into an agreement.*

21 *(i) (1) All of the following persons are not eligible to enter into*  
22 *an agreement:*

23 *(A) A person who has been convicted of a felony or*  
24 *misdemeanor involving the regulation of hazardous materials,*  
25 *including, but not limited to, a conviction of a felony or*  
26 *misdemeanor under Section 25395.13.*

27 *(B) A person who is in violation of an administrative order or*  
28 *agreement issued by or entered into with any federal, state, or local*  
29 *agency that requires site assessment or response action at a site,*  
30 *or a judicial order or consent decree that requires site assessment*  
31 *or response action at a site.*

32 *(C) A person who has engaged in gross negligence with respect*  
33 *to site assessment or response action at a site that causes*  
34 *endangerment of public health and safety or the environment.*

35 *(D) A person who obtains or seeks to obtain an approval or*  
36 *other determination from the department by fraud, negligent or*  
37 *intentional nondisclosure, or misrepresentation.*

38 *(2) If the department determines that any of the conditions*  
39 *specified in paragraph (1) apply to a person that has entered into*  
40 *an agreement, the department shall terminate the agreement.*

1     25399.15. (a) A brownfield project sponsor who enters into  
2 an agreement pursuant to Section 25399.14 with the department  
3 for oversight of a site assessment shall submit a site assessment  
4 plan to the department to conduct a site assessment of the  
5 brownfield site in accordance with the requirements of this section.

6     (b) (1) The site assessment proposed in the site assessment  
7 plan shall provide for the assessment, monitoring, and evaluation  
8 of a release or threatened release of hazardous materials at the  
9 brownfield site to determine or evaluate any one or more of the  
10 following:

11     (A) If a release of hazardous materials has occurred at the  
12 brownfield site.

13     (B) If a release or threatened release at the brownfield site  
14 poses a risk to public health and safety or the environment,  
15 including risk to water quality.

16     (C) The potential for redevelopment of the brownfield site.

17     (2) The site assessment plan shall also include all of the  
18 following:

19     (A) An opportunity for the public to participate meaningfully  
20 in decisions regarding the site assessment.

21     (B) Adequate characterization of the hazardous materials  
22 released or threatened to be released and documentation of the  
23 findings.

24     (c) Reasonably available information about the brownfield  
25 site, including sampling and analysis if appropriate, a preliminary  
26 evaluation of the risks posed by the hazardous materials released  
27 or threatened to be released, and any other information that the  
28 department determines is necessary.

29     (d) A brownfield project sponsor shall submit the site  
30 assessment plan to department for review and approval.

31     (e) The department shall evaluate the adequacy of a site  
32 assessment plan submitted pursuant to subdivision (c) to ensure  
33 the site assessment plan contains all necessary elements.

34     (f) After evaluating the site assessment plan pursuant to  
35 subdivision (d), if the department finds that the site assessment  
36 plan is adequate, the department shall approve the plan and  
37 provide notification to appropriate persons.

38     25399.16. (a) A brownfield project sponsor who enters into  
39 an agreement with the department pursuant to Section 25399.14  
40 for oversight of a response action shall submit a response action

1 plan to the department to conduct a response action at the  
2 brownfield site. The response action plan shall require the  
3 response action at the brownfield site to do both of the following:  
4 (1) Provide an opportunity for the public to participate  
5 meaningfully in decisions regarding the response action.  
6 (2) Adequately characterize the hazardous materials released  
7 or threatened to be released and document the findings.  
8 (b) A response action plan submitted by the brownfield project  
9 sponsor for the department's review and approval shall contain all  
10 of the following:  
11 (1) A summary of activities that have been conducted to  
12 determine the extent of contamination at the brownfield site and an  
13 assessment of potential health risks from exposure to hazardous  
14 materials and environmental impacts.  
15 (2) An identification of reasonably anticipated future land uses  
16 of the brownfield site.  
17 (3) A description of the techniques and methods to be used in  
18 excavating, storing, handling, transporting, treating, and  
19 disposing of any hazardous materials or environmental media  
20 contaminated with hazardous materials.  
21 (4) A description of the methods that will be employed during  
22 the response action to ensure the health and safety of workers and  
23 protection to the public and the environment.  
24 (5) A description of activities that will be implemented to  
25 control any endangerment that occurs during the response action  
26 at the brownfield site.  
27 (6) The details of any land use control.  
28 (7) An analysis of the potential for the proposed response  
29 action to be effectively implemented.  
30 (8) An analysis and certification of the compliance of the  
31 response action with federal, state, and local statutes, regulations  
32 and ordinances, including the California Environmental Quality  
33 Act (Division 13 (commencing with Section 21000) of the Public  
34 Resources Code).  
35 (9) A description of how the public has been involved to date  
36 and is proposed to be further involved.  
37 (10) Any other information that the department determines is  
38 necessary.  
39 (c) The department shall evaluate the adequacy of the response  
40 action plan submitted pursuant to subdivision (a). The department

1 *shall approve the plan if the department makes all of the following*  
2 *findings:*

3 *(1) The plan contains the procedures, details, and analysis*  
4 *required by subdivisions (a) and (b).*

5 *(2) When fully implemented, the response action will place the*  
6 *brownfield site in a condition that allows it to be permanently used*  
7 *for its reasonably anticipated future land use without any*  
8 *significant risk to human health or potential risk to the*  
9 *environment.*

10 *(3) The response action plan adequately addresses all public*  
11 *comments.*

12 *(4) If a presumptive cleanup approach is being proposed as the*  
13 *preferred remedy in a response action plan, the presumptive*  
14 *cleanup approach adequately addresses the conditions at the*  
15 *brownfield site.*

16 *(d) In approving a response action plan pursuant to subdivision*  
17 *(c), the department may require, as a condition of approval, the*  
18 *brownfield project sponsor comply with additional requirements*  
19 *when carrying out the response action plan. The department may*  
20 *also specify additional requirements for long-term maintenance*  
21 *and operations, including land use controls and engineering*  
22 *controls, that are to be included in the response action plan.*

23 *(e) After the department approves the response action plan*  
24 *pursuant to subdivision (c), the department shall notify all*  
25 *appropriate persons.*

26

27 *Article 4. Land Use Controls and Certificate of Completion*

28

29 *25399.19. (a) A response action plan may include land use*  
30 *controls that impose appropriate conditions, restrictions, and*  
31 *obligations on land use or activities when a hazardous material*  
32 *will remain at the site at a level that is not suitable for the*  
33 *unrestricted use of the site.*

34 *(b) If the department approves a response action plan that*  
35 *includes land use controls, the land use controls shall be executed*  
36 *by the land owner and recorded by the land owner in the office of*  
37 *the county recorder in each county in which all, or a portion of, the*  
38 *land is located within 10 days of the date of execution. The*  
39 *department shall not issue a certificate of completion pursuant to*  
40 *Section 25399.20 for an approved response action plan that*



1 requires the use of land use controls, until the department receives  
2 a copy of the recorded land use control. If the site that requires a  
3 land use control does not have an owner, or the department  
4 determines the owner is incapable of executing a binding land use  
5 control as required by this section, the department may record, in  
6 the county records, a “Notice of Land Use Restriction” that has the  
7 same binding effect as any other land use control executed  
8 pursuant to this section, and that is subject to the variance and  
9 termination procedures specified in subdivision (d).

10 (c) Notwithstanding any other provision of law, a land use  
11 control executed pursuant to this section and recorded so as to  
12 provide constructive notice, runs with the land from the date of  
13 recordation, is binding upon all of the owners of the land, and their  
14 heirs, successors and assignees and the agents, employees, or  
15 lessees of the owners, heirs, successors and assignees, and is  
16 enforceable by the department pursuant to Article 8 (commencing  
17 with Section 25180) of Chapter 6.5.

18 (d) Notwithstanding any other provision of law, a land use  
19 control executed pursuant to this section is subject to Section  
20 57012 and to the variance and removal procedures specified in  
21 Sections 25233 and 25234.

22 25399.20. (a) The department shall issue a certificate of  
23 completion upon the satisfactory completion of a response action  
24 by a brownfield project sponsor in accordance with an approved  
25 response action plan, in accordance with the requirements of this  
26 section.

27 (b) The department shall issue a certificate of completion if the  
28 department determines that the brownfield project sponsor has  
29 satisfactorily completed the response actions necessary to  
30 implement the approved response action plan in accordance with  
31 this chapter and with all other applicable statutes and regulations.

32 (c) Notwithstanding subdivision (b), the department shall issue  
33 a certificate of completion to a brownfield project sponsor when  
34 a response action plan includes long-term obligations that have  
35 not been completed, including operation and maintenance  
36 requirements or monitoring, only if the department makes all of the  
37 following determinations:

38 (1) All other response actions that are necessary to respond to  
39 the release have been satisfactorily completed.



1 (2) *The brownfield project sponsor has developed an adequate*  
2 *long-term operation and maintenance plan and demonstrated*  
3 *initial compliance of the system with the plan.*

4 (3) *The brownfield project sponsor provides financial*  
5 *assurance demonstrating that sufficient funds are available to fund*  
6 *the implementation of the operation and maintenance plan and the*  
7 *department's costs to monitor performance of the brownfield*  
8 *project sponsor and the effectiveness of the operation and*  
9 *maintenance plan, for the period of time the operation and*  
10 *maintenance plan will be in effect.*

11 (d) *If the department determines that long-term operation and*  
12 *maintenance is required at a brownfield site, the department may,*  
13 *as a condition of issuing a certificate of completion, enter into an*  
14 *operation and maintenance agreement with the brownfield project*  
15 *sponsor that governs the long-term operation and maintenance*  
16 *activities.* ~~is added to Chapter 6.8 of Division 20 of the Health and~~  
17 ~~Safety Code, to read:~~

18  
19 ~~Article 6.2.—Brownfield Response Unit Program Act~~  
20

21 ~~25367.1.—(a) This article shall be known, and may be cited, as~~  
22 ~~the Brownfield Response Unit Program Act.~~

23 ~~(b) The Legislature finds and declares all of the following:~~

24 ~~(1) Rapid cleanup and redevelopment of brownfields is a~~  
25 ~~priority of the state and the agency.~~

26 ~~(2) Local public entities play an increasingly more active and~~  
27 ~~important role in the cleanup and redevelopment of brownfields.~~  
28 ~~However, cleanup and redevelopment of brownfields by local~~  
29 ~~public entities is delayed or fails when local public entities do not~~  
30 ~~receive timely, appropriate review and consideration of cleanup~~  
31 ~~plans and actions by state or local regulatory agencies, particularly~~  
32 ~~at the initial phases of brownfield site cleanup.~~

33 ~~(3) Under current practices, each department and board within~~  
34 ~~the agency, as well as other state and local regulatory agencies, has~~  
35 ~~overlapping authority to review and approve or disapprove~~  
36 ~~cleanup plans submitted to the agency by local public entities at~~  
37 ~~any time before, during, or after cleanup of a brownfield site. Since~~  
38 ~~the agency does not have an administrative process for~~  
39 ~~coordinating this review, a department or board of the agency, or~~  
40 ~~other state or local regulatory agency may, and often does, review~~

1 a cleanup plan or cleanup action long after the local public entity  
2 has received approval from a different department or board of the  
3 agency, or other state or local regulatory agency, that has already  
4 accepted oversight responsibility, and long after the local public  
5 entity has expended considerable public funds toward cleanup in  
6 accordance with the cleanup plan that was initially approved. That  
7 late review often results in different and additional cleanup  
8 requirements.

9 (4) The lack of effective, efficient, predictable regulatory  
10 procedures for review of cleanup plans for the state's brownfields  
11 greatly increases local public entities' costs to clean up brownfield  
12 sites. Those increased costs have the deleterious effect of causing  
13 local public entities to delay, and in some cases abandon, cleanup  
14 and redevelopment of brownfield sites.

15 (5) Programs including the California Expedited Remedial  
16 Action Reform Act of 1994 (Chapter 6.85 (commencing with  
17 Section 25396)) and unified agency review of hazardous materials  
18 release sites under Chapter 6.65 (commencing with Section  
19 25260), have in large part been initiated to address this problem.  
20 However, these programs are available only on brownfield sites  
21 that have been voluntarily placed in those programs by responsible  
22 parties. Local public entities often do not purchase brownfield  
23 sites that they are compelling a responsible party to clean up, and,  
24 therefore, cannot utilize these programs.

25 (e) It is the intent of the Legislature, in enacting this article, to  
26 do all of the following:

27 (1) Establish a coordinated, efficient, expeditious process that  
28 is clear, predictable, and time sensitive, by which local public  
29 entities, or responsible parties who are compelled by a local public  
30 entity to clean up a brownfield site, may obtain effective, efficient,  
31 predictable regulatory review of local public entities' plans and  
32 actions to clean up the state's brownfields.

33 (2) Establish a dedicated brownfield response unit within the  
34 agency to coordinate that review.

35 (3) Provide the dedicated brownfield response unit with  
36 exclusive authority to review and approve plans and actions to  
37 clean up the state's brownfields that are submitted by local public  
38 entities.

39 25367.2. Unless the context dictates otherwise, the following  
40 definitions govern the construction of this article.

1 ~~(a) “Board” means the State Water Resources Control Board~~  
2 ~~and any subdivision thereof.~~

3 ~~(b) (1) “Brownfield” or “brownfield site” means real~~  
4 ~~property, the expansion, redevelopment, or reuse of which may be~~  
5 ~~complicated or inhibited by the presence or perceived presence of~~  
6 ~~a hazardous substances as defined in subdivision (h) of Section~~  
7 ~~25281.~~

8 ~~(2) “Brownfield” or “brownfield site” does not include any of~~  
9 ~~the following:~~

10 ~~(A) Property listed, or proposed for listing, on the National~~  
11 ~~Priorities List established under Section 105 of the federal act (42~~  
12 ~~U.S.C. Sec. 9605(a)(8)(B)).~~

13 ~~(B) A property listed by the department pursuant to Section~~  
14 ~~25356.~~

15 ~~(c) “Certificate of completion” means a determination that the~~  
16 ~~responsible party, if any, and the local public entity have complied~~  
17 ~~with the requirements of all state and local laws, ordinances,~~  
18 ~~regulations, and standards that are applicable to the site~~  
19 ~~investigation and response action for which the certificate is~~  
20 ~~issued. A certificate of completion issued pursuant to this article~~  
21 ~~shall confer the same immunity as, and shall be conditioned on the~~  
22 ~~same requirements as, a certificate of completion issued pursuant~~  
23 ~~to subdivision (c) of Section 25264, except that, for purposes of~~  
24 ~~this article, the unit shall be deemed the administering agency.~~

25 ~~(d) “Cleanup action” or “cleanup plan” means all plans, and~~  
26 ~~all actions taken pursuant thereto, by a local public entity, its~~  
27 ~~officers, employees, or agents, to clean up the brownfield site,~~  
28 ~~including, but not limited to, site investigation, site~~  
29 ~~characterization, remediation, and removal.~~

30 ~~(e) “Local public entity” means a city, county, city and county,~~  
31 ~~redevelopment agency as defined in Section 33003, or any~~  
32 ~~political subdivision of the state.~~

33 ~~(f) “Regulatory agency” means the state regulatory agency~~  
34 ~~that is a department, board, unit, or other subdivision of the~~  
35 ~~agency, or other state agency, including, but not limited to, the~~  
36 ~~Department of Fish and Game, or certified unified program~~  
37 ~~agency as defined in paragraph (1) of subdivision (a) of Section~~  
38 ~~25404.~~

39 ~~(g) “Respond,” “response,” or “response action” means a~~  
40 ~~removal action and remedial action, including, but not limited to,~~

1 site characterization, the preparation and implementation of site  
2 remedial investigation workplans and removal action workplans,  
3 and implementation of operation and maintenance measures.

4 (h) “Responsible party” includes all of the following:

5 (1) A responsible party or liable person, as defined in Section  
6 25323.5.

7 (2) A person subject to a cleanup or abatement order issued  
8 pursuant to Section 13304 of the Water Code.

9 (i) “Secretary” means the Secretary for Environmental  
10 Protection.

11 (j) “Unit” or “brownfield response unit” means the  
12 brownfield response unit established by the secretary pursuant to  
13 Section 25367.3.

14 25367.3. (a) The secretary shall establish a brownfield  
15 response unit within the agency. The secretary, or his or her  
16 designee, shall assign appropriate staff to the unit. The unit shall  
17 include employees from the department, the board, and California  
18 regional water quality control boards, who include a project  
19 manager, an attorney, a toxicologist, a geologist, and a  
20 hydrogeologist. The unit may include other employees or agents  
21 deemed necessary by the secretary, or his or her designee, for  
22 implementation of this article.

23 (b) (1) The Brownfields Revitalization and Environmental  
24 Restoration Act of 2001 amended the federal act to promote the  
25 cleanup and reuse of brownfields, to provide financial assistance  
26 for brownfield revitalization, and to enhance state response  
27 programs.

28 (2) The unit may allocate and expend funds received from a  
29 United States Environmental Protection Agency award of state  
30 response program grant funds to defray administrative costs  
31 associated with establishing and maintaining the unit that may be  
32 needed over and above unit costs paid for by oversight agreements,  
33 as long as the use of those grant funds is consistent with the grant’s  
34 requirements.

35 (c) The unit shall be available on a statewide basis and shall  
36 meet all of the following requirements:

37 (1) All unit staff shall be familiar with, and trained as necessary  
38 in, the implementation of, all state programs relating to  
39 brownfields, including, but not limited to, the Polanco  
40 Redevelopment Act (Article 12.5 (commencing with Section

33459) of Chapter 4 of Part 1 of Division 24) and the California Expedited Remedial Action Reform Act of 1994 (Chapter 6.85 (commencing with Section 25396)).

(2) All unit staff shall be familiar with, and trained as necessary in, the use of agreements, such as covenants not to sue and prospective purchaser agreements, and shall follow all regulations and guidelines adopted for the implementation of this article.

(3) In order to expedite the operation of the policies set forth in this article, the unit shall report only to the secretary, or his or her designee. The department and the board may not require the unit's actions, with regard to oversight of a response action pursuant to this article, to be approved or reviewed by any other division of the department or board.

(d) The unit shall adopt regulations to implement this article and promote the redevelopment of brownfield sites.

25367.4. (a) The unit shall serve as the oversight agency for purposes of all response actions taken pursuant to this article.

(b) The unit shall oversee a response action at a brownfield site pursuant to this article only upon the application of a local public entity pursuant to Section 25367.5.

(c) Upon receipt of an application by a local public entity, the unit shall review response action plans and oversee approved response actions if the site meets the conditions of a brownfield as defined in Section 25367.2.

(d) (1) The unit may not oversee a response action pursuant to this article if the brownfield site is currently operating as, or is proposed to be developed as, a school, general acute care hospital, long-term health care facility, or child day care facility.

(2) For purposes of this subdivision, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. "School" means any school used for the purpose of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive.

(e) The unit shall meet with the local public entity as required by this article. At all required meetings, the unit shall have present necessary personnel and agents, including, but not limited to, a project manager, an attorney, a toxicologist, a geologist, and a hydrogeologist. Nothing in this article limits or prevents the unit

1 and the local public entity from meeting, upon mutual agreement,  
2 more often than required by this article.

3 ~~25367.5. (a) (1) A local public entity, in its sole discretion,~~  
4 ~~may apply to the unit in writing pursuant to this article for the~~  
5 ~~oversight of a response action to a brownfield site that is located in~~  
6 ~~the jurisdiction of the local public entity.~~

7 ~~(2) An application may be on a form created by the unit or may~~  
8 ~~be any writing submitted by the local public entity that meets the~~  
9 ~~requirements of this section. The written application may contain~~  
10 ~~any information related to the brownfield site, not otherwise~~  
11 ~~protected by law. The written application shall contain a~~  
12 ~~description of the brownfield site, current commonly known~~  
13 ~~address, if any, preliminary title report, and all environmental~~  
14 ~~information concerning the site reasonably available up to the time~~  
15 ~~the application is submitted, including, but not limited to, a Phase~~  
16 ~~I environmental assessment completed in accordance with~~  
17 ~~standards set by the American Society of Testing and Materials.~~

18 ~~(b) (1) The unit may not require a local public entity applying~~  
19 ~~for response action oversight pursuant to this article to own the~~  
20 ~~property that is the subject of the application.~~

21 ~~(2) The unit may not require, as a condition of applying for~~  
22 ~~oversight pursuant to this article, that the local public entity that~~  
23 ~~is compelling a responsible party pursuant to the Polanco~~  
24 ~~Redevelopment Act (Article 12.5 (commencing with Section~~  
25 ~~33459) of Chapter 4 of Part 1 of Division 24) agree to carry out or~~  
26 ~~assume responsibility for, any response action deemed necessary~~  
27 ~~by the unit at the brownfield site.~~

28 ~~(3) A local public entity applying for oversight pursuant to this~~  
29 ~~article shall assist in the implementation of this article and enter~~  
30 ~~into a negotiated agreement to pay oversight costs if the~~  
31 ~~responsible party does not.~~

32 ~~(c) On or before 30 days after the receipt of a written~~  
33 ~~application completed by a local public entity pursuant to~~  
34 ~~subdivision (a), the unit shall inform the local public entity in~~  
35 ~~writing of the unit's acceptance or denial of the application for~~  
36 ~~oversight, based on criteria stated in this article. Written notice of~~  
37 ~~acceptance shall include the date, time, and place of an initial~~  
38 ~~conference, to meet with the local public entity pursuant to~~  
39 ~~subdivision (d). Acceptance of an application may not be denied~~



1 ~~unreasonably. Written denial of an application shall include~~  
2 ~~reasons for the denial.~~

3 ~~(d) On or before 30 days after notifying the local public entity~~  
4 ~~that the unit has accepted oversight of a brownfield site under this~~  
5 ~~article, the unit shall hold an initial conference at which it shall~~  
6 ~~meet with the local public entity to determine the identity of all~~  
7 ~~potentially responsible parties, potentially interested state and~~  
8 ~~local regulatory agencies, the environmental conditions at the~~  
9 ~~brownfield site, a preliminary scope of work based upon available~~  
10 ~~data, for addressing the environmental conditions at the~~  
11 ~~brownfield site, and the date, time, and place of a second~~  
12 ~~conference to be held pursuant to subdivision (f).~~

13 ~~(e) On or before 30 days after the initial conference, the unit~~  
14 ~~shall notify all other potentially responsible parties and potentially~~  
15 ~~interested state and local regulatory agencies in writing by~~  
16 ~~certified mail that the unit has accepted oversight of the response~~  
17 ~~action pursuant to this article, provide them with a description of~~  
18 ~~the brownfield site, and give them notice of the date, time, and~~  
19 ~~location of the second conference.~~

20 ~~(f) On or before 90 days after the initial conference, the unit~~  
21 ~~shall hold a second conference with the local public entity, any~~  
22 ~~potentially responsible parties who attend, and any other interested~~  
23 ~~state and local regulatory agencies, for appropriate review of all~~  
24 ~~information submitted to the unit to date. The unit shall determine~~  
25 ~~the requirements for the local public entity to complete an~~  
26 ~~environmental site assessment, the preparation of an~~  
27 ~~environmental site investigation report to determine the nature and~~  
28 ~~extent of suspected releases of hazardous substances and the~~  
29 ~~presence of other contaminants and pollutants, and the~~  
30 ~~requirements for carrying out other response or cleanup activities,~~  
31 ~~including requirements for public notification and public~~  
32 ~~participation. Any state or local regulatory agency, or any local~~  
33 ~~public entity, may participate and provide input for information~~  
34 ~~purposes only at the conference, with regard to any issue~~  
35 ~~pertaining to the investigation of the brownfield site that may~~  
36 ~~reasonably be anticipated.~~

37 ~~(g) The site remedial investigation workplan and the removal~~  
38 ~~action workplan for a brownfield site subject to this article shall be~~  
39 ~~submitted by the local public entity and approved in accordance~~  
40 ~~with the following schedule:~~

~~(1) On or before 60 days after the local public entity submits a draft site remedial investigation workplan to the unit for review, and to other state or local regulatory agencies present at the second conference for review and comment, the unit shall hold a third conference with the local public entity and other identified state or local regulatory agencies, to provide comment and recommendations for final approval of the draft site remedial investigation workplan. The local public entity may resubmit a revised draft site remedial investigation workplan based on comments and recommendations made at the third conference.~~

~~(2) On or before 60 days after holding the third conference with the local public entity, or on or before 60 days after receipt of a revised draft site remedial investigation workplan, if any, submitted by the local public entity, the unit shall notify the local public entity of its decision to approve or deny the draft site remedial investigation workplan. Approval of the workplan may not be denied unreasonably. Denial of the workplan shall be in writing, state the reasons for denial, and notify the local public entity of all modifications needed to obtain approval of the draft site remedial investigation workplan.~~

~~(3) The local public entity may resubmit a draft site remedial investigation workplan that has been denied pursuant to paragraph (2) until it is approved.~~

~~(4) Upon approval of a site remedial investigation workplan, the local public entity shall complete remedial investigation in accordance with the approved workplan.~~

~~(5) Upon completion of the site investigation pursuant to the approved site remedial investigation workplan, the local public entity shall submit a draft removal action workplan to the unit to review and approve. A copy of the draft removal action workplan shall be provided concurrently by the local public entity to other identified state and local regulatory agencies for review and comment.~~

~~(6) On or before 60 days after the draft removal action workplan is submitted, the unit shall hold a fourth conference with the local public entity, and any other identified state and local regulatory agencies, to provide comments and recommendations for final approval of the draft removal action workplan. The local public entity may resubmit a revised draft remedial action~~

~~workplan based on comments and recommendations made at the fourth conference.~~

~~(7) On or before 60 days after the fourth conference, or on or before 60 days after receipt of a revised draft removal action workplan, if any, resubmitted by the local public entity, the unit shall notify the local public entity in writing of its decision to approve or deny the draft removal action workplan. Approval may not be denied unreasonably. Denial of the workplan shall be in writing, state the reasons for denial, and notify the local public entity of all modifications needed to obtain approval of the draft removal action workplan.~~

~~(8) The local public entity may resubmit a draft removal action workplan that has been denied pursuant to paragraph (7) until it is approved.~~

~~25367.6.—(a) Upon satisfactory completion of a response action to a brownfield site, pursuant to a removal action workplan approved in accordance with Section 25367.5, and upon a finding made pursuant to subdivision (b), the unit shall issue a certificate of completion to the local public entity for that brownfield site.~~

~~(b) The unit may issue a certificate of completion only if the unit makes a finding that the brownfield site has been placed into a condition that allows it to be used permanently for its planned use without any significant risk to human health or potential for any future significant environmental damage.~~

~~25367.7.—(a) This article does not provide a private right of action.~~

~~(b) A local public entity's application for oversight of a response action pursuant to this article is a discretionary action and does not constitute an admission of liability by the local public entity for the environmental conditions of the brownfield site that is the subject of the application.~~

~~25367.8.—Except as otherwise specifically provided, nothing in this article affects the authority of the agency, or any subdivision or agent thereof, to issue orders or take other action under any provision of law to protect public health and safety or the environment.~~